

this subpart, it must have been determined that the income of the individual or family is too low to permit the individual or family to pay the approved Gross Rent with 30 percent of such individual's or family's Adjusted Monthly Income, as defined in subpart A. For requirements concerning the disclosure and verification of Social Security Numbers, see part 200, subpart T of this chapter. For requirements regarding the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 200, subpart V, of this chapter. For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 5.

[56 FR 7531, Feb. 22, 1991, as amended at 60 FR 14833, Mar. 20, 1995; 61 FR 13624, Mar. 27, 1996]

§ 236.715 Determination of eligibility.

(a) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission and tenant applications for assistance. The requirements of 24 CFR part 5 govern the submission and verification of information related to citizenship and eligible immigration status for applicants, and the procedures for denial of assistance based upon a failure to establish eligible immigration status.

(b) The owner must use good faith efforts to admit tenants according to the following list, provided that the number of units authorized for a particular category would not be exceeded and provided that there is sufficient funding for the category:

(1) First: Applicants eligible for Rental Assistance Payments;

(2) Second: Applicants eligible to pay a below market rent under section 236;

(3) Third: Applicants who can pay the Market Rent.

(c) Before admitting an applicant who can pay the Market Rent, the owner must obtain written approval from HUD if at least 10 percent of the number of units authorized under the section 236 program are already occupied by tenants paying Market Rent.

(d) Before admitting an applicant who will not receive the benefit of Rental Assistance Payments, the

owner must obtain written approval from HUD if fewer than 90 percent of the number of units authorized under the Rental Assistance Payments contract are already occupied by tenants receiving such assistance.

(e) Upon written request of the owner, the Commissioner may issue a written waiver of the requirements of paragraphs (b) through (d) of this section based on a finding of sufficient justification. Each such waiver shall be supported by a statement of the pertinent facts and grounds.

(Approved by the Office of Management and Budget under control numbers 2502-0352 and 2502-0354)

[51 FR 21862, June 16, 1986, as amended at 60 FR 14833, Mar. 20, 1995; 61 FR 13624, Mar. 27, 1996]

§ 236.720 Provisions applicable to cooperative members.

(a) A member of a cooperative who obtains a certificate of eligibility shall be required, as a condition of receiving the certificate, to agree that upon a sale of his membership, any equity increment accumulated through rental assistance payments will not be made available to the member, but will be turned over to the cooperative housing owner. Funds received by a cooperative representing an equity increment accumulated through rental assistance payments shall be deposited by the cooperative in a special account to be disbursed as directed by the Secretary.

(b) The term *tenant* as used in this subpart shall include a member of a cooperative, and the term *rental payment* shall include the carrying charges under the occupancy agreement between the members of the cooperative and the cooperative housing owner.

§ 236.725 Term of contract.

The rental assistance contract shall be limited to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

§ 236.730 Maximum annual rental assistance contract amount.

The rental assistance contract shall specify the maximum amount of the rental assistance payments for the project for the rent-up period, or for

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any such other period of time as the Secretary may prescribe, based upon the Secretary's estimate of probable demand and tenant income, including a 10 percent contingency allowance. At the end of such period of time, and annually thereafter, appropriate adjustments, as the Secretary may prescribe, shall be made in the maximum annual rental assistance contract amount, to reflect the actual requirements of the eligible tenants and a 10 percent contingency allowance.

§ 236.735 Rental assistance payments and rental charges.

(a) *Amount of rental assistance payments.* The rental assistance contract shall provide that the payment on behalf of a Qualified Tenant shall not exceed the difference between the Gross Rent and the Total Tenant Payment.

(b) *Total tenant payment for qualified tenants who first receive rental assistance on or after May 1, 1983.* Notwithstanding § 236.55(b), the Total Tenant Payment payable for these Qualified Tenants shall be the highest of the following amounts, rounded to the nearest dollar:

(1) 30 percent of Adjusted Monthly Income as defined in subpart A;

(2) 10 percent of one-twelfth of Annual Income as defined in subpart A;

(3) If the family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the monthly portion of such payments which is so designated. If the family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(3) shall be the amount resulting from one application of the percentage.

(c) *Total tenant payment for qualified tenants who were receiving rental assistance on April 30, 1983 and whose assistance has been continuous thereafter.* Notwithstanding § 236.55(b), the Total Tenant Payment for these Qualified Tenants shall be calculated in accordance with paragraph (b) of this section, except that instead of 30 percent, the percentage applied to Adjusted Monthly Income shall be as follows:

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Effective date of recertification	Percentage
May 1, 1983 to Sept. 30, 1983	27
Oct. 1, 1983 to Sept. 30, 1984	28
Oct. 1, 1984 to Sept. 30, 1985	29
Oct. 1, 1985 and after	30

(d) *Special conditions.* (1) For the purposes of this section, a Qualified Tenant whose initial lease was effective before May 1, 1983 includes the following: A Qualified Tenant that resided in a unit assisted under the Rental Assistance Programs or Rent Supplement Program on April 30, 1983, and whose assistance under those programs has been continuous thereafter; and a family that resided in a unit with the benefit of section 8 Housing Assistance Payments on July 31, 1982 and whose participation in the section 8, Rent Supplement or the Rental Assistance Payment Program has been continuous thereafter. A Qualified Tenant or family shall not be disqualified if, after that date, it moved from one unit to another unit in the same project. For these purposes, units in buildings located on adjacent sites and managed as one project will be considered part of the same project even if they have separate project numbers and separate mortgages.

(2) Notwithstanding paragraphs (b) and (c) of this section, the Total Tenant Payment payable by a Qualified Tenant who continues to receive assistance in the same project shall not be increased by more than 10 percent during any 12-month period as a result of application of the percentages in paragraph (c) of this section, and application of the revised definitions in §§ 236.2 and 236.3. However, this 10 percent limit does not apply to Families subject to paragraph (b)(3) of this section, provided that the welfare agency includes as the housing component of the Family's grant an amount equal to their entire rent payment, without reduction. The Total Tenant Payment may be increased by more than 10 percent during any 12-month period to the extent that the portion of such increase above 10 percent is attributable to increases in income or changes in family composition or family circumstances that are unrelated to the factors set out in this paragraph (d)(2).